

Service Date: May 21, 1993

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER Of the Application	)	TRANSPORTATION DIVISION
of Rodney and Ruth Aden dba Travel	)	
Escort Service, Polson, Montana	)	DOCKET NO. T-9992
for a Montana Intrastate	)	
Certificate of Public Convenience	)	ORDER NO. 6198
and Necessity.	)	

**PROPOSED ORDER**

APPEARANCES

FOR THE APPLICANTS:

Donald K. Peterson, 5931 Highway 93, Polson, Montana 59860

FOR THE PROTESTANTS:

Greg Beach, Beach Transportation Company, 825 Mount Avenue,  
Missoula, Montana 59801

James Michael, dba Kalispell Taxi Service, P.O. Box 2508,  
Kalispell, Montana 59901

Kevin Cunningham, dba Port Polson Taxi Service, 168 Rocky  
Point, P.O. Box 624, Polson, Montana 59860

Dale Duff, Rocky Mountain Transportation, Inc., 1410 East  
Edgewood Drive, Whitefish, Montana 59937

FOR THE COMMISSION:

Denise Peterson, Staff Attorney, 1701 Prospect Avenue, P.O.  
Box 202601, Helena, Montana 59620-2601

BEFORE:

BOB ROWE, Vice Chairman & Hearing Examiner

The Hearing Examiner, having taken evidence and being fully advised in the premises, issues the following Proposed Findings of Fact, Conclusions of Law, and Order pursuant to Section 2-4-621, MCA.

BACKGROUND

1. On December 24, 1992 the Montana Public Service Commission (Commission) received an application from Rodney and Ruth Aden, dba Travel Escort Service, Polson, Montana (Travel Escort Service or Applicants) for a Class B Certificate of Convenience and Necessity authorizing the transportation of passengers and luggage between all points and places in Lake, Flathead, Missoula, Sanders, Mineral, Glacier, Pondera, Teton, Lewis and Clark, Powell, Granite, Ravalli, Deer Lodge, Jefferson, Silver Bow, Beaverhead, Madison, Gallatin, Cascade, Judith Basin, Meagher, Park, Sweetgrass, Broadwater and Lincoln Counties.

2. The Commission received numerous written protests statewide, as a result of the broad application.

3. On January 21, 1993 Applicants amended the application as follows:

All service must originate or terminate in the following counties: Lake, Missoula, Flathead.

We will not solicit transportation of railway crews.

We will limit our authority to exclude limousine service.

4. Based on the proposed amendments, a number of protestants withdrew their protests. Protestants remaining prior to hearing included James Michael (dba Kalispell Taxi Service), Rocky Mountain Transportation, Inc., Beach Transportation Company, Hall Transit Charter Service, Inc., Randall Eugene Johnson, Daketokacate, and Kevin Paul Cunningham (dba Port Polson Taxi Service). The Commission then scheduled and published a Notice of Public Hearing for March 25, 1993 in the Lake County Courthouse, Small Conference Room, 106 4th Avenue East, Polson, Montana, commencing at 8:30 a.m.

5. On March 10, 1993, Applicants filed a further amendment agreeing to limit the scope of business to originate or terminate in Lake County.

6. At the hearing March 25, 1993 only Greg Beach for Rocky

Mountain Transportation, Inc., James Michael, Kevin Cunningham and Dale Duff for Beach Transportation Company, appeared to protest. Parties would not agree to stipulate to a final order.

7. Post-hearing, Applicants filed an amendment agreeing to limit their scope of business to originate and terminate in Lake County, indicating withdrawal of the request to perform airport shuttle service for Kalispell and Missoula airports.

8. The Commission takes administrative notice of the hearing held March 25, 1993 and decision in Docket No. T-93.7.PCN, regarding Port Polson Taxi Service (Kevin Cunningham).

By default order upon withdrawal of the protests, the Commission granted an amendment to PSC No. 9218 to allow Port Polson an extension of its radius from 25 to 70 miles from the City of Polson.

#### SUMMARY OF TESTIMONY

##### Applicants' Testimony

9. Robert A. Ricketts, Polson businessman, appeared and testified in support of the application. He stated that Polson is struggling for things to do for the tourists. He feels a travel service is needed with the addition of the resort complex

and if offered in Polson it could provide a better price. To his knowledge, there is no service originating in Polson, i.e., no tour services available in Polson. He also supported Applicant as a shuttle service to the Kalispell and Missoula airports. Polson needs tour service for three, five or seven passengers. He does not see Applicants' service as competing with Port Polson Taxi Service, he testified.

10. Barbara E. Cooke, Director of Sales and Catering for the new resort Kwatagnuk Polson, appeared and testified in support of the application. With groups and conferences, there is a great need for transportation, e.g., spouses to Whitefish. She felt that the "big outfits" could not come on a two-hour notice to take a small to mid-size tour to the Bison Range or to fill a local need for group transportation. She testified that the proposed service would fill this need for local group transportation. She has used Rocky Mountain and Beach for large groups coming from the outside. But groups stay three or four days and she does not see the worth of having the big outfits come 60 miles to take the smaller groups out. Ms. Cooke testified that Kwatagnuk uses its own shuttle vans for local trips, and shuttle such as shopping. The issue, she stated, was "guided

tours." The larger need for 15 counties from and returning to Polson is not fulfilled by local carriers, she testified. She testified that she would leave the transportation up to the Applicants, but would give the name to guests.

11. John Dowdall, president of First Citizens Bank, Polson, appeared and testified in support of the application. The Applicants are long-time customers and financially solid. He could not testify on a statistical need for the new service. However, he has been involved in economic development for the area and helped obtain funding for the resort, Kwataqnuk. He foresees growth in the area.

12. Phyllis J. Fulkerson, director of the Chamber of Commerce, Polson, appeared and testified on her own behalf in support of the application. She receives thousands of inquiries on travel to the area. For Kwataqnuk alone, they are expecting 3,000 to come in for conventions. She testified that there are separate needs: the need to pick up at the airport; the need for local taxi service; and the need for bus service. She feels that Applicants would do a good job with a touring service, she testified. She testified that these needs are not being met now.

13. Under cross-examination, Ms. Fulkerson expressed the

concern that Port Polson Taxi cannot be in two places at once. She also stated that she would personally use and recommend Applicants tour service. She testified that she has not called Rocky Mountain or Beach because the requests have been for smaller groups.

14. Larry Pitts, Polson, Montana, is the new owner of "Let's Travel" travel agency in St. Ignatius, Montana. He will be actively involved in promoting group tours. He was not approached by anyone other than Applicants to provide tour service. He sees competition as effective, he testified. He has used, and will use Beach and Rocky Mountain for the big bus tours in their service territories. He has talked to Port Polson Taxi and will use that service locally. However, he foresees the Applicants can fulfill a particular need he cannot offer now, that is tour service for 8-12 people for mid-level conventions. Kwataqnuk's presence raised the issue of localized tour service need. There will be 60 conventions this year which will require transportation service. His business will use the existing service -- Port Polson Taxi for the local, smaller needs, the bus service of Rocky Mountain and Beach for larger groups.

15. Under cross-examination, Mr. Pitts testified that

Applicants could meet his special tour service requirements with service both originating and terminating in Lake County. In his opinion, Applicants' service "would not touch" Rocky Mountain or Beach. Port Polson Taxi, however, would have to get more competitive as it does not advertise enough. Questioned by Beach, Mr. Pitts testified that he was unaware Beach provided van service (8-12), but he would not care to have Beach come out for the mid-level groups.

16. Mr. Pitts responded to Rocky Mountain's questions that people come from the Kalispell and Missoula airports mostly by rental cars. A number, however, ask for shuttle service. He testified that he was unaware of anyone unable to get transportation from the airports. In further response, Mr. Pitts indicated that he did not know that Beach had van service equipped for handicapped or that Kalispell Taxi has handicapped access and can transport up to 15 passengers (service territory ending at Polson).

17. Ms. Pat DeBries, Certified Public Accountant (CPA), Polson, Montana, appeared and testified in support of the application. As Applicants' CPA, she testified that they would do an outstanding job. She further testified that she sees a need for



airport shuttle.

18. Others appeared and testified in support of the application. Jean Schwarz, Polson, Montana, supported shuttle service to the airport in Missoula. Charles Griffith, Service, Inc., Polson, was approached by Applicant's. While he does not know about their capacity to buy vehicles, if Adens say they are going to do something, they do it. Rod Aden is a mechanic and can maintain the vehicles, he testified. Ronald Buzzard, Police Chief, Polson, testified on his own behalf that the area needs the shuttle service.

19. Jutta Aden, Polson, testified that she would offer bilingual German translation for local tour service. She would not like to send for such service to Kalispell or Missoula. Heidi Medland, Polson, testified on behalf of tourists. She came as a tourist and has family and friends coming as tourists. When they come, there is no service available to take them to scenic places, such as Glacier Park. She plans to run a Bed and Breakfast and expects mostly German tourists. They would not take a taxi to Glacier or rent a car -- too costly. She needs this service in Polson, she testified. She would personally use this service. She would not think of calling Missoula to come to

Polson to take tours to the Bison Range, she testified. She expected her groups to be five or less at one time. It would also be great to have an airport shuttle, she stated.

20. Ruth Aden (Applicant), Polson, Montana, appeared and testified on behalf of her proposed travel and tour service. She and her husband Rod operate on a sound financial basis, she testified. Rod Aden is a certified GM mechanic. They own a Chevrolet Astrovan and are prepared to order a 16 passenger van.

She testified that Applicants propose to offer visitors a more enjoyable stay. She would like to be able to expand and not be limited on size of vehicles. She proposed to originate or terminate in Lake County to allow one-way travel.

21. Under cross-examination, Mrs. Aden testified that their Chevy Astrovan seats eight and they are pricing a 16 passenger van that they are prepared to order. She also had the intention of buying a 20 passenger Chevy bus -- old school bus -- and refurbishing. They would like not to be limited to expand. They are prepared to comply with safety requirements and Americans with Disabilities (ADA) requirements (\$3,000 extra for handicapped equipment). She applied for 15 counties because she looked into sites for tourism, she stated. She only listed the

15 counties for tours. She wanted one-way travel capability so that they could go to the Kalispell or Missoula airports to pick up. Applicants' whole purpose is to serve Lake County, she further testified, and to fill a niche no one else fills, taking groups around to local spots and on tours.

22. Applicant also responded, under cross-examination, that they would do the shuttle service at the rate of \$35 per passenger although they would lose money. They would devote full time to the service without additional employees.

#### Protestants' Testimony

23. Protesting the application, Greg Beach appeared and testified on behalf of Beach Transportation Company (Beach), Missoula, Montana, a company started by his grandfather in 1941.

Beach provides transportation service by school buses, coaches and vans. Beach has a full-time safety director and an extensive safety program. Beach's tariff permits Class B charter service statewide, with transportation to originate or terminate in Missoula County. Mr. Beach testified that the application was too broad. The airport shuttle service is not pertinent, he stated. Beach is ready and able to meet additional need from the

Missoula airport. Mr. Beach also sees no need for the larger equipment Applicant proposes to buy, since the testimony at the hearing was for smaller numbers of passengers.

24. Under examination by the Commission, Mr. Beach testified that Beach could respond immediately with its 24 hour dispatch, subject to 1 1/2 hour time frame to get to Polson. Beach has no employees or equipment located in Lake County. The charge for the trip is \$1.65 per mile, whether it is one passenger or more. He testified that Beach has seen no need for tours into Lake County.

25. Kevin Paul Cunningham dba Port Polson Taxi Service (Port Polson) next appeared and testified opposing the application. He has had taxi authority since October 14, 1992 and has not yet had the time to fully develop the taxi service. Ninety percent of his business is from 7:00 p.m. to 2:30 a.m. He operates a 1992 Dodge Caravan which seats seven and a 1987 three-door coup Subaru for emergency when he needs two vehicles. He stated that Applicant testified he was meeting the need for taxi service in the 25 mile radius. He feels that Applicants have not done their research -- he does not feel that there is as great a need as they project. Most of the hearing has been about tours.

That would be fine, he testified, but that only lasts two to three months of the year.

26. Mr. Cunningham testified that he has received calls on transportation to the airport. Granting airport authority to Applicants would be detrimental to Port Polson which could not take competition as it is. Port Polson has not made income yet, but he feels it will take off. Any competition would be detrimental to the local taxi service. Authority sought by Applicants, if granted, would give carte blanche to Port Polson's present 25 mile radius service territory including Polson and Ronan areas, he testified.

27. Under cross-examination, Mr. Cunningham admitted that he had done no market studies on the transportation needs of the area. Local people call and request transportation to the airport, he stated. He does not advertise tours or airport shuttle service, he testified. Under his authority he can serve to the Bison Range.

28. Dale Duff, sole owner of Rocky Mountain Transportation, Inc. (Rocky Mountain), Whitefish, Montana, appeared and testified in opposition to the application. Rocky Mountain has Class B and C passenger charter authority originating or terminating within

Whitefish and a 50 mile radius, with pick up authority 50 miles from Kalispell. Rocky Mountain has no authority to pick up south of Polson. Rocky Mountain is a full-service charter company which includes eight motor coaches and six 15 passenger Ford vans. Rocky Mountain has been interested in and has done business in the Polson area through Navigator Travel. He has queried Kwataqnuq. There has never been a request from Lake County he was unable to fulfill. He does not advertise tours in Lake County.

29. James Michael, dba Kalispell Taxi Service, also testified in opposition to the application. His equipment includes seven 1988 and 1989 passenger cars and several fifteen passenger vehicles. He operates an airport shuttle service and meets all Glacier flights. He is concerned that granting the application for shuttle service would adversely affect his business, he testified. He has not advertised in Polson but has provided trips from Polson. He advertises through Glacier International airport. His service area, 50 miles in any direction from Kalispell, permits him to serve most hotels in Polson.

Public Testimony

30. June Hermanson, Polson, Montana, appeared and testified on behalf of the public interest. She is on the Lake County Advisory Committee for the Montana Department of Transportation (DOT) required under DOT rules. It is the committee's job to advise of the number of vehicles in the area providing transportation service, to make certain there is ADA coverage, to coordinate transportation service and to work to provide affordable transportation for all. The committee's goal is to advocate for accessible and affordable transportation services. This goal includes setting up a public transit system. The primary barrier to seeking employment in the area is transportation.

31. Ms. Hermanson testified that Port Polson has met the local need not met by the Senior Citizens Council. Port Polson has been active on the advisory committee.

DISCUSSION AND FINDINGS

32. Pursuant to Title 69, Chapter 12, Montana Code Annotated (MCA) the Commission supervises and regulates intrastate motor carrier service. . 69-12-201, MCA. The maintenance of an adequate common carrier motor transportation system has been declared a public purpose. . 69-12-202, MCA. To obtain motor carrier operating authority requires an application to the Commission and a hearing whenever a protest is filed or a request for a hearing is received. . 69-12-321, MCA.

33. Section 69-12-323, MCA, governs the requirements for a Commission decision on whether an application should be granted.

(2)(a) If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefor shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed trans-



portation service or that might be affected thereby.

34. The Commission has interpreted . 69-12-323, MCA, as requiring it to address these issues before granting an application for authority:

1. Is the applicant fit and able to perform the proposed service?
2. Does the public convenience and necessity require the authorization of the proposed service?
3. Can and will existing carriers meet the public need for the proposed service?
4. Would the proposed service have an adverse impact on existing transportation service?

35. The Commission finds that Applicants are fit and capable of providing at least part of the proposed service. According to the president of their bank and their certified public accountant, they are in solid financial condition. Mr. Aden is also a certified GM mechanic and presumably well-qualified to maintain the vehicles. They have shown drive and initiative and willingness to take on a travel/tour service. Their amended request for authority originating and terminating in Lake County serves as a withdrawal of the request for airport shuttle

service.

36. In determining public convenience and necessity, the Commission has traditionally followed the analysis of Pan-American Bus Lines Operation, 1 M.C.C. 190 (1936).

The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest. 1 M.C.C. at 203.

37. The Commission finds, based on the record, that the new operation or service will serve a useful public purpose. Testimony supports a need for travel/tour service originating and terminating in Lake County. Both Kwataqnuk and "Let's Travel" travel agency have indicated a pronounced need for tour service in small to mid-size groups. This need is not being met by existing carriers. Both Kwataqnuk and Let's Travel use Beach and Rocky Mountain's services for large groups. However, neither finds that the big outfits can and will meet the need for the proposed service as well, having to come 60 miles for small groups. Applicants have proposed, and plan to fill, a very unique niche. They are in the area and know it well. Their

intention is to serve the travel/tour needs of Lake County.

These needs may include tours to interesting sites outside Lake County. As proposed, however, Applicants would serve Lake County in transporting and returning the groups to the locale.

38. The final question is whether a grant of this authority will harm existing carriers contrary to the public interest. Port Polson Taxi Service has received its grant of additional authority for a 70 mile radius, not 25 mile, from Polson, Montana. This extension allows Port Polson to transport to and from the Missoula airport, but prohibits picking up passengers in Flathead County (i.e., Glacier International Airport). However, Port Polson may transport passengers to Flathead County up to its 70 mile radius. Port Polson received its authority by default, upon stipulation and withdrawal of protests in Docket No. T-93.7.PCN. Port Polson is restricted to transportation of 10 passengers or less. The Commission finds that the service now proposed by Applicants, upon withdrawing its request for airport shuttle service, will not harm Port Polson Taxi. Mr. Cunningham received his grant of additional authority to take passengers to the airports in Missoula and Kalispell and to pick up at the Missoula airport. Applicants' travel/tour service will fill a

very different and specialized need, providing round trip tours from Lake County.

39. James Michael, dba Kalispell Taxi Service, will not be harmed by Applicants' proposed operations. Applicants have withdrawn from airport shuttle service and Port Polson Taxi has stipulated not to pick up in Kalispell. Mr. Michael's local operation with a 50 mile radius from Kalispell will continue unscathed by operations from the Polson area. He can continue to transport passengers from Kalispell to most of Polson.

40. Beach Transportation Company will not be adversely affected by Applicants' proposed travel/tour service from and to Lake County. Beach is a large, successful operation which has not previously provided the mid-level from Lake County service as proposed. Beach's criticism was that the initial application was too broad. This application, now substantially narrowed, poses little competition to Beach. Mr. Beach stipulated to airport shuttle service for Port Polson Taxi in agreeing to the 70 mile radius. Mr. Beach's testimony that he has seen no need for tours into Lake County indicates that Applicants have found their unique niche. Kwataqnuq and Let's Travel have stated that they would continue to use Beach and Rocky Mountain Transportation,

Inc. for their large group needs. The Commission finds no adverse impact from this narrow service.

41. Rocky Mountain Transportation, Inc. as a large, successful operation also should not be adversely affected by the proposed service. While it has met some need in Lake County, it has not advertised tours there. The proposed service, with Applicants' presence in Lake County, fulfills a unique need which cannot be met as well by these larger carriers in Missoula and Flathead Counties.

42. Since this limited operation will not harm these large carriers, the Commission finds that Applicants' proposal to provide travel and tour motor carrier service originating and terminating in Lake County should be granted. Applicants may do tours to the 15 counties requested, understanding that the primary propose is to meet the travel and tour needs for small to mid-size groups originating in and returning to Lake County. Testimony supports transportation up to the 16-passenger van and the eight-passenger mini-van.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, Montana Code Annotated.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter.

3. Applicants have demonstrated a public demand or need for the proposed service, and have demonstrated that existing carriers cannot meet that demand or need as well.

4. Applicants have demonstrated fitness to provide the proposed service.

5. The proposed service, as amended, would not have an adverse impact on existing transportation service.

ORDER

NOW THEREFORE IT IS ORDERED that the application in Docket No. T-9992 shall be GRANTED for the following authority:

Class B - Passengers to all points and places within the following counties: Lake, Flathead, Missoula, Sanders, Mineral, Glacier, Pondera, Teton, Lewis and Clark, Powell, Granite, Ravalli, Deer Lodge, Jefferson, Silver Bow, Beaverhead, Madison, Gallatin, Cascade, Judith Basin, Meagher, Park, Sweetgrass, Broadwater and Lincoln.

LIMITATIONS: (1) Transportation must originate and terminate in Lake County; (2) Transportation will not be provided by limousine; (3) Transportation of railway crews is prohibited; (4) Transportation shall be by vans, up to 16 passengers per van; and (5) Transportation which originates and terminates within the city limits of Polson is prohibited.

IT IS FURTHER ORDERED, pursuant to Section 2-4-621, MCA, that this is a proposed order only. Any party has the opportunity to file exceptions to this initial decision, present briefs, and make oral arguments before the full Commission. Exceptions and supporting briefs must be filed with the Commission within twenty (20) days from the date of service of this proposed order.

Done and Dated this 20th day of May, 1993.

BY ORDER OF THE PUBLIC SERVICE COMMISSION

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BOB ROWE, Commissioner and  
Hearing Examiner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: This Proposed Order is a proposal for decision. Each party has the opportunity to file exceptions, present briefs, and have oral argument before the PSC prior to Final Order. See, Section 2-4-621, MCA. Exceptions and briefs must be filed within 30 days of the service date of this Proposed Order. Briefs opposing exceptions must be filed within 10 days thereafter. Oral argument, if requested, must be requested at or prior to the time of briefing. See, ARM 38.2.4803 and 38.2.4804.